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PHOENIX, ARIZONA

October 1, 1970

DEPARTMENT OF LAW LETTER OPINION NO. 70-12-L (R-100)

REQUESTED BY: THE HONORABLE MORRIS A. HERRING
Chairman of Board of Deposit

QUESTION: May the Board of Deposit authorize the State Treasurer to invest excess active deposits without appropriation from the Legislature and without encumbrance prior to investment?

ANSWER: Yes.

A.R.S. § 35-325.12.B provides as follows:

"B. When the state board of deposit is of the opinion that the actual amount of active deposits of state monies is in excess of the amount necessary to meet the anticipated demands of such active deposits, but such excess active deposits are available for investment for only a limited period shorter than thirty days, the state board of deposit may direct the state treasurer to invest such excess active deposits in United States treasury bills having a maturity of a date no later than the first day of the next succeeding [sic] period of designation."

It is our understanding that your inquiry arose due to the apparent conflict between A.R.S. § 35-325.12.B and the following described statutes:

A.R.S. §§ 35-131.31 and 35-142.B provide in part that no money shall be withdrawn from the treasury except upon the warrant of the Commissioner of Finance.

A.R.S. § 35-154 provides in part:

"A. No person shall incur, order or vote for the incurrence of any obligation against the state or for any expenditure not authorized by an appropriation and an allotment. . . ."

A.R.S. §§ 35-181.01 through 35-195 describe in detail the fiscal procedures, controls and reports which are required when dealing with state monies.

A.R.S. § 35-351 limits the types of investments of state monies which may be made by the Treasurer and also requires that such investments by the Treasurer be with the approval of the Governor and the Secretary of State.

A.R.S. § 35-353 provides in part:

"In the investment of the permanent funds, the commissioner of finance shall draw his warrant on the state treasurer, payable from the proper fund, for the purchase of the bonds or securities. . . ."

However, the investment of state monies in accordance with A.R.S. § 35-325.12.B is exempted by A.R.S. § 35-325.12.G from the provisions of all of the statutes cited above. A.R.S. § 35-325.12.G reads as follows:

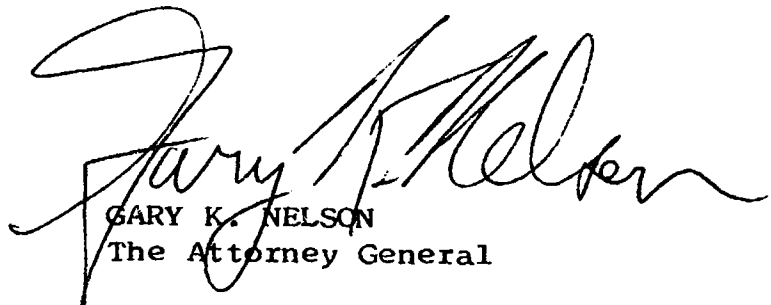
"G. The investment of state monies as provided in this section shall be exempt from the provisions of § 35-131.31, § 35-142, subsection B, § 35-154, §§ 35-181.01 to 35-195, inclusive, and §§ 35-351 and 35-353."

Accordingly, on the basis of the unambiguous language contained in A.R.S. § 35-325.12.B and the express exemptions contained in A.R.S. § 35-325.12.G, it is our opinion that whenever (1) the State Board of Deposit is of the opinion that the actual amount of active deposits of the state monies is in excess of the amount necessary to meet the anticipated

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demands of such active deposits and (2) such excess active deposits are available for investment for only a limited period shorter than 30 days, the State Board of Deposit may direct the State Treasurer to invest such excess active deposits in United States treasury bills having a maturity of a date no later than the first day of the next succeeding period. It should be noted particularly that the authority of the State Board of Deposit to direct investment by the Treasurer is limited to investments in certain United States Treasury bills as emphasized above.

Respectfully submitted,



GARY K. NELSON
The Attorney General

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